IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NOS 149 AND 197 OF 1999.

WRIT PETITION NO.149 OF 1999.

Shri Raghuram P.O., Junior
Engineer, Sub-Division I,
Division VIII (B-S), P.W.D.,
Fatorda, Margao. ... Petitioner.

Versus

1. State of Goa through
its Chief Secretary,
Secretariat, Panaji.
2. Goa Public Service Commission
through its Secretary,
EDC House, Panaji.
3. The Chief Engineer & Ex-Officio
Additional Secretary, P.W.D.,
Altinho, Panaji.
4. Shri M.H. Raichurkar,
Division I (Bldgs.), P.W.D.,
Panaji.
5. Shri Sharad V. Naik,
Sub-Division III, Div. XII
(PHE-SWSP), P.W.D.,
Sanguem.
6. Shri Venkanna Desai,
Sub Division I, Div. XXV
(Roads), P.W.D., Canacona.
7. Shri G.R. Raman, Circle V,
(PHE North), P.W.D., Altinho,
Panaji.
8. Shri Anil V. Vernekar,
Sub-Division III,
Division II (Roads),
P.W.D., Panaji.
9. Shri G.R. Babshet,
Sub-Division II, Division II
(Roads), P.W.D., Panaji.
10. Shri M.V. Gaonkar, Sub-Division
IV, Division XXIII (Roads),
P.W.D. Sanquelim.
11. Shri M. Lokesh, Sub-Division
II, Division I (Bldgs.),
P.W.D. Porvorim.
12. Shri S.P. Jadhav, Sub-Division
III, Division III (PHE),
P.W.D., Panaji.
13. Shri V.V. Joglekar,
Division XVII (PHE-North),
P.W.D., Porvorim.

14. Shri P.G. Phutancar,
    Sub-Division VI,
    Division XVII (PHE-North), P.W.D.,
    Valpoi.
15. Shri B.A. Chowgle, Sub-Division I,
    Division XVII, P.W.D., Bicholim.
16. Shri S, Ramachandran,
    Sub-Division III, Division
    VII (NH), P.W.D., Panaji.
17. Shri G.D. Shetty, Sub-Division
    III, Division VIII (Bldgs.
    South), P.W.D., Canacona.
18. Shri P.A. Samant, Division
    XIV (NH), P.W.D., Margao.
19. Shri Milagres Cardozo, Sub-
    Division II, Division XXIV
    (PHE Salaulim South),
    P.W.D., Margao.
20. Shri P. S. Kudalkar,
    Division XXIV (PHE-Salaulim
    South), P.W.D., Margao.
21. Shri S. R. Mangueshkar,
    Sub-Division IV, Division
    XI (Q & C), P.W.D.,
    Panaji.
22. Shri N. G. Hegde, Sub-Division
    I, Division XII (PHE-SWSP),
    P.W.D., Quepem.
23. Shri J. H. Kamble, Sub-Division
    IV, Division I (Bldgs),
    P.W.D., Panaji.
24. Shri B. S. Kharade, Sub-Division
    IV, Division XX (PHE-South),
    P.W.D., Canacona.
25. Shri P. P. Raikar, Sub-Division
    IV, Division VI (Roads),
    P.W.D., Margao.
26. Shri D. S. Gaonkar, Sub-Division
    III, Division XVII
    (PHE-North), P.W.D.,
    Mapusa.
27. Shri Satish Tirodkar, Sub-
    Division I, Division I
    (Bldgs), P.W.D.,
    Panaji.
28. Shri C. A. Josseph, Sub-
    Division I, Division XVIII (Roads)
    P.W.D., Ponda.
29. Shri A. N. V. Achutha Rao,
    Circle III (Roads-North),
    P.W.D., Panaji.
30. Shri P. V. Sasidharan,
    Sub-Division I, Division VII
    (NH), P.W.D., Panaji.
31. Shri E. K. Jayanthan, Sub-

Division III, Division XIX
(Bldgs. CMS Complex), P.W.D.,
Bambolim.
32. Shri B. S. Jagannath, Division
VIII (Bldgs-South), P.W.D.,
Margao.
33. Shri A. Venkateshwarlu,
Sub-Division II, Division
XIV (NH), P.W.D.,
Margao.
34. Shri Telu Tata Rao, Sub-
Division III, Division XXIII
(Roads), P.W.D., Bicholim.
35. Shri C. R. Gururajan, Sub-
Division II, Division XVI
(Bldgs-C), P.W.D.,
Quepem.
36. Shri B. Koteshwar Rao, Circle I
(Bldgs), P.W.D., Altinho,
Panaji.
37. Shri A. K. Mony, office of
S.S.W., P.W.D., Panaji.
38. Shri K. R. Nair, office
of S.S.W., P.W.D., Panaji. ... Respondents.

WRIT PETITION NO. 197 OF 1999.

Shri K.N. Narayanan,
Junior Engineer, Sub Div. II,
Division XVII (PHE-N),
Public Works Dept.,
Pernem. ... Petitioner.

Versus

1. State of Goa through
its Chief Secretary,
Secretariat, Panaji.
2. Goa Public Service Commission
through its Secretary,
EDC House, Panaji.
3. The Chief Engineer & Ex-Officio
Additional Secretary, P.W.D.,
Altinho, Panaji.
4. Shri M.H. Raichurkar,
Division I (Bldgs.), P.W.D.,
Panaji.
5. Shri Sharad V. Naik,
Sub-Division III, Div. XII
(PHE-SWSP), P.W.D.,
Sanguem.
6. Shri Venkanna Desai,
Sub Division I, Div. XXV
(Roads), P.W.D., Canacona.

7. Shri G.R. Raman, Circle V, (PHE North), P.W.D., Altinho, Panaji.
8. Shri Anil V. Vernekar, Sub-Division III, Division II (Roads), P.W.D., Panaji.
9. Shri G.R. Babshet, Sub-Division II, Division II (Roads), P.W.D., Panaji.
10. Shri M.V. Gaonkar, Sub-Division IV, Division XXIII (Roads), P.W.D. Sanquelim.
11. Shri M. Lokesh, Sub-Division II, Division I (Bldgs.), P.W.D. Porvorim.
12. Shri S.P. Jadhav, Sub-Division III, Division III (PHE), P.W.D., Panaji.
13. Shri V.V. Joglekar, Division XVII (PHE-North), P.W.D., Porvorim.
14. Shri P.G. Phutancar, Sub-Division VI, Division XVII (PHE-North), P.W.D., Valpoi.
15. Shri B.A. Chowgle, Sub-DivisionI, Division XVII, P.W.D., Bicholim.
16. Shri S, Ramachandran, Sub-Division III, Division VII (NH), P.W.D., Panaji.
17. Shri G.D. Shetty, Sub-Division III, Division VIII (Bldgs. South), P.W.D., Canacona.
18. Shri P.A. Samant, Division XIV (NH), P.W.D., Margao.
19. Shri Milagres Cardozo, Sub-Division II, Division XXIV (PHE Salaulim South), P.W.D., Margao.
20. Shri P. S. Kudalkar, Division XXIV (PHE-Salaulim South), P.W.D., Margao.
21. Shri S. R. Mangueshkar, Sub-Division IV, Division XI (Q & C), P.W.D., Panaji.
22. Shri N. G. Hegde, Sub-Division I, Division XII (PHE-SWSP), P.W.D., Quepem.
23. Shri J. H. Kamble, Sub-Division IV, Division I (Bldgs), P.W.D., Panaji.
24. Shri B. S. Kharade, Sub-Division IV, Division XX (PHE-South),

P.W.D., Canacona.
25. Shri P. P. Raikar, Sub-Division IV, Division VI (Roads), P.W.D., Margao.
26. Shri D. S. Gaonkar, Sub-Division III, Division XVII (PHE-North), P.W.D., Mapusa.
27. Shri Satish Tirodkar, Sub-Division I, Division I (Bldgs), P.W.D., Panaji.
28. Shri C. A. Josseph, Sub-Division I, Division XVIII (Roads) P.W.D., Ponda.
29. Shri A. N. V. Achutha Rao, Circle III (Roads-North), P.W.D., Panaji.
30. Shri P. V. Sasidharan, Sub-Division I, Division VII (NH), P.W.D., Panaji.
31. Shri E. K. Jayanthan, Sub-Division III, Division XIX (Bldgs. CMS Complex), P.W.D., Bambolim.
32. Shri B. S. Jagannath, Division VIII (Bldgs-South), P.W.D., Margao.
33. Shri A. Venkateshwarlu, Sub-Division II, Division XIV (NH), P.W.D., Margao.
34. Shri Telu Tata Rao, Sub-Division III, Division XXIII (Roads), P.W.D., Bicholim.
35. Shri C. R. Gururajan, Sub-Division II, Division XVI (Bldgs-C), P.W.D., Quepem.
36. Shri B. Koteshwar Rao, Circle I (Bldgs), P.W.D., Altinho, Panaji.
37. Shri A. K. Mony, office of S.S.W., P.W.D., Panaji.
38. Shri K. R. Nair, office of S.S.W., P.W.D., Panaji. ... Respondents

Mr. M.S. Sonak, Advocate for the Petitioner in both Petitions.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.R. Bharne, Government Advocate for the Respondent No. 1 in Writ Petition No. 149 of 1999.

Mr. A.N.S. Nadkarni with Mr. H.D. Naik, Advocates for

the Respondent No. 2 in Writ Petition No. 149 of 1999.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Addl. Govt. Advocate for Respondents 1 and 2 in Writ Petition No. 197 of 1999.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 12th August 2003.

ORAL JUDGMENT (PER REBELLO, J.)

Petitioners in both these petitions are Junior Engineers working in the office of the third respondent. The grievance of the petitioners in these petitions is to their non-selection to the post of Assistant Engineer by promotion. Petitioners have formulated two challenges for consideration which can be summed up as under:-

(a) The reserved vacancies on being dereserved in the year 1998, appointment by promotion against those vacancies ought not to have been clubbed in the year 1998 but the vacancies ought to have been considered for the year on the expiry of three years, from the year when a reserved candidate was not available. The Selection Committee having clubbed all such vacancies in the year 1998 has acted arbitrarily. On account of such clubbing, the zone of selection was extended. Respondents, who were junior to the petitioners, and, who, otherwise, would not have been eligible, have been

selected. It is, therefore, submitted that the selection by respondents 1 and 2 be set aside on that ground.

(b) It is then submitted that the confidential reports of the petitioners for the years which the Selection Committee took into consideration, were written by Officers who were also competing for selection to the post of Assistant Engineer and who were holding the posts on adhoc basis. It is pointed out that this could not have been done as it would be unfair and, apart from that, arbitrary inasmuch as those holding the posts on adhoc basis would naturally be inclined to see that competition against them is neutralized. Reliance is placed on the Judgments of the Apex Court in the case of **Dr. S.P. Kapoor v. State of Himachal Pradesh and others**, (1981) 4 S.C.C. 716 and in the case of **State Bank of India and others v. Kashinath Kher and others**, (1996) 8 S.C.C. 762.

2. Insofar as the first contention is concerned the same issue has been dealt with while disposing of Writ Petition Nos. 126 and 127 of 1999. For the view taken therein, the said contention must be rejected.

3. We then come to the second contention. Before adverting to the Judgments, we may consider the factual aspects. Insofar as Writ Petition No. 149 of

1999 is concerned, the petitioner's specific grievance is that his confidential reports were written by one Milagres Cardozo, who was himself competing for promotion to the post of Assistant Engineer. From the minutes available, it is seen that the said Milagres Cardozo was first available in the zone for consideration in the year 1986 and, thereafter, was selected in the year 1989. The petitioner was neither eligible in the year 1986 nor in the year 1989.

4. Insofar as the petitioner in Writ Petition No. 197 of 1999 is concerned, it is specifically averred that the confidential reports were written by S.P. Jadhav. Shri S.P. Jadhav was available in the zone for consideration in the year 1986 but was selected in the year 1988. Petitioner K.N. Narayanan became eligible for consideration only in the year 1998.

5. Considering the above, in our view, the issue as raised need not be decided as, admittedly, the said two officers, who wrote the confidential reports were not competing as against the petitioners. It is no doubt true that in both the Judgments cited by the Apex Court it has been mentioned that the adhoc officers should not write the confidential reports. In our opinion, on the facts of these cases, it is not necessary to interfere with the selection as, admittedly, the said officers were not competing in the

real sense as against the petitioners.

5. For the aforesaid reasons, rule discharged with no order as to costs.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

ed’s.